

TEXAS ALCOHOLIC BEVERAGE COMMISSION  
COMMISSION MEETING  
MONDAY, JANUARY 28, 2002

The Texas Alcoholic Beverage Commission met on this date in Room 185 at 5806 Mesa Drive, Austin, Travis County, Texas. Members present: Allan Shivers, Jr., Chairman; John T. Steen, Jr., Member and Gail Madden, Member. Staff present: Rolando Garza, Administrator; Randy Yarbrough, Assistant Administrator; Lou Bright, General Counsel; Jeannene Fox, Director of License & Compliance; Greg Hamilton, Chief of Enforcement; Denise Hudson, Director of Resource Management; Andrea Morrozoff, Planner; Captain Mike Rogers, Dallas and Lieutenant David Alexander, Dallas. Present to receive Employee of the Year Awards: Mike Kane, San Antonio Compliance; Judi Bailey, Resource Management Division; Bich Nguyen, Resource Management Division; Agent Marcos Guajardo, San Angelo Enforcement and Roy Hale, Enforcement Division. Present to receive certificate of service: Gene Bowman, 30 years, General Services Department. Visitors included: Robert Sparks, Licensed Beverage Distributors, Inc.; Karen Housewright, MADD; Glen Garey, Texas Restaurant Association; Alan Gray, Licensed Beverage Distributors, Inc.; Mike McKinney, Wholesale Beer Distributors of Texas; Fred Marosko, Texas Package Stores Association; Charles McGrigg, Wine Institute and Dominic Giarratani, Legislative Budget Board.

The agenda follows:

1:30 p.m.- Call to order.

1. Presentation of 2001 Employee of the Year Awards.
2. Recognition of agency employees with 20 or more years of service.
3. Approval of minutes of November 26, 2001 meeting; discussion, comment, possible vote.
4. Administrator's report:
  - a. discussion of staff reports;
  - b. recognitions of achievement;
  - c. discussion of management controls;
  - d. strategic planning process;
  - e. state auditor's update;
  - f. Survey of Organizational Excellence; and
  - g. sale to intoxicating.
5. Fiscal stewardship of agency; discussion, comment, possible vote.
6. Public comment.
7. Adjourn.

The meeting was called to order at 1:48 p.m. by Chairman Shivers.

MR. SHIVERS: We will call this meeting of the Texas Alcoholic Beverage Commission to order on Monday, January 28, 2002. It is one forty-eight. Sorry to keep you all waiting.  
First, I'd like to start by introducing our 2001 Employee of the Year

recipients. I'm going to call on the heads of the respective divisions to tell us something about each of the recipients.

First, from license and compliance, is Mike Kane. Jeannene, would you introduce Mike?

MS. FOX: Mike has been with the agency over 30 years. He's obviously one of our longtime employees. He started out as an entry level auditor in what was then our auditing division and is now the regional compliance supervisor in San Antonio. Mike has done a variety of duties in his job while he's been with us. I think one of the things that speaks worlds about him is to know that whenever we have anything new or different, something that needs an in-depth review or in-depth investigation or needs someone who will come and share their honest and true values and beliefs and ideas about a particular matter, there's always one person that we turn to in compliance to do that and that would be Mike.

In years past - though I hate to mention this, but I think it speaks well of him - he kind of got put on a bingo committee, not because he really wanted to and he didn't volunteer. He stood tall and stepped in there with both feet and did what was asked of him. He has participated on various rule making committees with marketing practices and always participates and has something to contribute in seller training and other avenues that we do in compliance. Whenever we have something new to do, we always turn to Mike and I just think that does speak volumes.

The one thing that I personally have a great deal of respect of Mike for is, frankly, he speaks his mind. He doesn't always agree with what you might want to call his supervisors, but he approaches that in a very professional, very well thought out and organized manner - I know you know what I'm talking about - but that's just a little example. He always wants to do everything for the best and the good of the agency, and I think that just speaks worlds of him. I am very proud to have you on our staff and to be working with you. I congratulate you as employee of the year.

MR. KANE: Thank you very much. I just want to say it's an honor for me to work for this agency and I really appreciate the recognition.

MR. SHIVERS: Congratulations.

From the resource management division, we have two employees of the year - Judi Bailey and Bich Nguyen. Denise, would you introduce them?

MS. HUDSON: Judi transferred to TABC from DIR in 1993. She started off as an

accountant here and has worked her way up to be manager of our expenditure and payroll processing section. She serves on numerous committees. She was one of the founders of a USPS advisory group. She works with the comptroller and Billy Hamilton. I can't say enough about Judi. She's very willing to help employees. She does a lot of our training on our various systems in accounting. She's just a great person to have on staff.

MR. SHIVERS: Congratulations.

MS. BAILEY: Thank you.

MS. HUDSON: Bich is a 1993 graduate of the University of Texas. She works in our IT area. She's a programmer down there. One of the things that I like about working with Bich is she always brings such enthusiasm to her job. She's working right now on a new program that will allow us to customize some training. She has learned to work on just about every program that we have down there. She always brings a lot of creativity to all of our projects.

MR. SHIVERS: Congratulations.

MS. NGUYEN: Thank you.

MR. SHIVERS: We also have two employees of the year from the enforcement division - Marcos Guajardo and Roy Hale.

MR. HAMILTON: We are going to call Agent Marcos Guajardo up first. He was born in Del Rio and joined the United States Marine Corps in 1989 and proudly served for six years. He was deployed to Saudi Arabia for Desert Shield and Desert Storm. It's unusual that we would put a new agent in an outpost. In October, will be four years for Marcos here, and he's been in the San Angelo outpost for two of the last three and a half years. We felt since he had been to Saudi Arabia and had been deployed in Desert Shield and Desert Storm, that he would be fitting for an outpost.

Before coming to TABC, he served with the Del Rio Police Department for two years. His first duty station as an enforcement agent was in Houston, then we sent him to San Angelo where he has done an outstanding job. He's married. He's with his wife, Pilar, and he has three daughters, Dawn Faith, Bethany Skye and Lauryn Joy. Would you please give Marcos a round of applause.

MR. SHIVERS: Congratulations.

MR. GUAJARDO: Thank you.

MR. HAMILTON: The next individual that I'd like to recognize is Roy Hale. When you talk about Roy, you talk about the enforcement division. I guess we can call him Mr. Enforcement. Roy has been with this agency for a while. As a matter of fact, he had a stint where he left and came back to the agency. Roy is very important to the enforcement division. He watches the monies, and sometimes he scares me because he acts like the sky is falling. I don't know what to do sometime and, with Sam Smelser's help, we will kind of settle him down. He gets uptight sometimes.

He is a 19-year veteran of the agency. After graduating college in 1978, Roy joined the TABC as an administrative technician in what is now the general services department. Rising to chief of purchasing and supply services, he left the agency in 1983 for employment in the private sector. Roy returned to the TABC in 1987 to help organize and manage the agency's seller/server training program. In 1989, he was assigned to the enforcement division to assist with program planning and to oversee the enforcement division's budget planning, budget execution and program evaluation processes. He continues in that role today as a program specialist. Roy is married and the father of two adult sons. He is a two-time graduate of Southwest Texas State University. He received a BBA in 1978 and an MPA in 1993. He presently serves as a member of that university's MPA advisory board and has also served in various capacities as an officer of the CenTex Chapter of the American Society for Public Administration. Roy, I want to say, "Thank you."

MR. HALE: Thank you.

MR. SHIVERS: Congratulations.

Now we want to recognize an employee who has been with us for 30 years - Gene Bowman. He was initially stationed in Houston as a field tax auditor and rose to the position of assistant district auditing supervisor in 1980. Transferring to Austin in 1982, he was instrumental in developing the first field auditor training program and served as the agency's initial audit training supervisor. In October 1984, he became the director of general services and keeps the nuts and bolts of this place running. He's just one of the pillars that this agency relies on. Congratulations.

MR. BOWMAN: Thank you.

MR. SHIVERS: It's great to have all of these wonderful people who give so much of their lives and time to this agency and doing the excellent job they do in

inspiring their fellow employees to do as well as they do.

Minutes of the meeting of November 26, 2001 have been mailed to the commission. Are there any changes?

MS. MADDEN: I move they be accepted.

MR. STEEN: Second.

MR. SHIVERS: All in favor, say aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed?

Administrator's report. Mr. Garza?

MR. GARZA: Mr. Chairman, before I go into my report, I would like to invite all of our guests here this afternoon to stay over after the meeting. We have a reception that we've set up for the recipients of this year's employee of the year awards out in the foyer as well as for our 30-year employee, Mr. Bowman. I hope that you will have time in your schedule to join us for that.

Before I turn the floor over to Ms. Fox, who's going to be bringing us an update on the strategic planning process that the agency has already started with two forums to date, and then Chief Hamilton will be bringing us a report on a sale to intoxicated person campaign that we ran in Commerce, Texas on December 20<sup>th</sup> of last year, I'd like to give you just a few brief updates on some projects that we have going on here at the agency.

You will remember back in November of last year, when we last met, we talked about an impending audit being done by the state auditor's office. I got a report from the auditors this morning that tells us that they are on track in terms of their timetable. While they have no reportable findings at this point, they are about to finish with the enforcement division and will be spending the rest of their field work time - another three or four weeks - up in licensing to take a look at some of those processes and procedures. We should have a more detailed report to give this time next month.

Also, in November, you will recall, we talked a little bit about the results of the Survey of Organizational Excellence as conducted by the University of

Texas at Austin. We had a response rate of 71 percent here at TABC. About 359 employees responded to that survey. Mr. Yarbrough will be leading an internal work group that will be taking a look at some of that data and look at some of the trends. While we had a 71 percent response rate, there's still areas that I think shows some places where we can address, namely, the whole notion of internal communication. There's some concern our employees are telling us with respect to career development opportunities. There's some questions with respect to effectiveness of supervisory staff and, as always, the issue of comparable and fair pay. Randy is going to be heading a workgroup made up of some folks from across the agency. They will take a look at some of these trends and come up with some ways we can substantively address these through policy, procedure or practice - something that we can do to address some of these issues that our staff has brought forth.

MR. SHIVERS: The commission will be interested in seeing the results of Randy's meetings.

MR. GARZA: We most certainly will place those in your hands and will be glad to entertain a discussion on those at the point of the report.

The last thing I would report to you and, Ms. Madden, the last time we talked you had asked a question about our staffing. I had reported to the board that there was one issue that I had been pretty firm on in terms of a need for the agency and that centered on the need for a planner. Eric Pearson was this agency's grants and contracts manager assigned to the enforcement division, and over the holidays he took another job and went back home to Michigan which gave us an opportunity to recruit and hire a person, not only to do the grants/contracts management, but also to help us out with some long-term planning.

This afternoon, I'd like to introduce you to a lady whom we've been fortunate enough to lure away from Washington, D.C. She was working with the Police Executive Research Forum as a research associate. Her name is Andrea Morrozoff. She is making her way up here to the podium in case any of you have any questions. Andrea will be working with grants and contracts and will also be helping us in developing some long-term planning, doing some program evaluations of our enforcement education efforts and also taking a good critical assessment of some of the programs that we do here at the TABC to determine their effectiveness, their cost effectiveness and whether or not we are getting a return for the investment. You will be hearing and seeing of Andrea in the coming months as she gets into some of her assignments for the agency.

MR. SHIVERS: Welcome to the TABC. We are delighted to have you.

MS. MORROZOFF: It's good to be here. I'm sure I'll be working closely with you in the future. It's good to meet you.

MS. MADDEN: What programs are you evaluating?

MS. MORROZOFF: In D.C., I worked on a National Guns First Training Program which teaches law enforcement agents about state and federal laws and how to prosecute firearms offenders federally, working with the ATF and tracing all firearms that they receive. I did a program evaluation of that one on the national scale. That's the major one I've worked on.

MR. GARZA: She has some experience also in underage drinking.

MS. MORROZOFF: On the OJJDP underage drinking and underage drinking enforcement leadership building rules. Actually, I met Greg Hamilton at the OJJDP underage drinking conference in October of 2000 where we presented some of our research and case studies on that.

MS. MADDEN: You are targeting some federal grants that we are going to go after?

MS. MORROZOFF: Hopefully.

MS. MADDEN: We look forward to hearing about those.

MR. SHIVERS: We've always been trying to get a good handle on how Texas stacks up with other states on the degree of underage drinking and the traffic fatalities due to intoxication versus other states. The data, as far as I've seen, doesn't seem to be recorded consistently from state-to-state or put in easily comparable formats. Chief Hamilton and I have taken a crack or two at it to see if we can make it make more sense, but we are still not where I'd like to be with it.

MR. HAMILTON: I think Andrea is going to get us there with a better understanding of what we are looking at.

MR. SHIVERS: Good.

MS. MORROZOFF: One thing I should say about the alcohol enforcement industry is that there is a lot of areas for improvement, but nationally and looking down at the programs that are operating, Texas is definitely one of the leaders in this area. I'm really proud to be here and to be a part of this agency.

MR. SHIVERS: Let's not rest on our oars. Thank you.

MR. GARZA: With that, Mr. Chairman, I'll give the floor to Ms. Fox for her report and then Chief Hamilton will talk to us about the sale to intoxicating.

MS. FOX: I just want to bring you up-to-date on where we are with our strategic planning process. We started late last fall in looking at how we would approach it this year. As we have done in the previous years, we try to build on what we have done in the past to make it even a better process every year as we go through.

We look at both internal and external assessments. One of the things we wanted to expand upon this year was our external assessments. In years past, we generally hear from the industry and other community groups such as MADD and those type groups through correspondence. But, we wanted to try to reach out more to the public we serve as well as other industry members that we haven't heard as much from. So, we planned eight public forums throughout the state. The first one was last Thursday in El Paso. We had about 25 to 30 attendants at that public forum, and we had our second one this morning here in Austin. We had around 30 people in attendance. The next one will be in Houston and then we will go to Dallas and Tyler the week after. Then we do Lubbock, Harlingen and end up with the last one being March 1<sup>st</sup> in San Antonio. I invite you to attend any of those - only one of you at a time though - you would like to be there for. They generally last an hour and a half to two hours. It just kind of depends on the audience, itself. We hope to get a lot of different ideas on where people see that we should be headed, what we have done really well and maybe areas that they feel where we need to improve. We hope to get a lot of input.

At the same time we are doing that, we will also be doing an internal assessment with various departments we have here and with our employees across the state. At the end of that process, which should be somewhere in the middle of March, we will have a meeting in Austin with representatives from all levels of our employees within the agency, from headquarters and the field with different sergeants, captains, Agents I - whatever it might be - as well as compliance and ports of entry, so we will have a good representation and we will have those workgroups and work sessions at some location here in Austin.

Hopefully, once we work through all of that, we will have a draft of the strategic plan to you by May 6<sup>th</sup>. Give me a day or two on either side, but somewhere around that date, hopefully, around two weeks before the commission meeting. At the commission meeting in May, we would ask



you to adopt that plan with any changes that you might want. One thing I would do at this time is to ask you rather than to have our usual meeting on the fourth Monday of the month in May to have it on the third Monday which would be the 20<sup>th</sup>. The fourth Monday is a holiday anyway, but we need at least 10 days to make any changes you may request or recommend and get it published and submitted by June 1<sup>st</sup>. So, I would ask that we go ahead and firm up that meeting date. If you can't, just let us know. I know you didn't bring your calendar, but just keep that in mind and let Cheryl know.

That's pretty much our process. This is our strategic plan of last year and, by June 1, we will have a document ready to submit, hopefully, with some identified strategies and identified goals that are more specific, perhaps, than we have done in the past.

MR. SHIVERS: Let's make sure it ties into our legislative goals.

MS. FOX: It does. Part of the document is our legislative goals and our measures. Any questions?

MR. STEEN: In the public forums, how are you getting notice out to people?

MS. FOX: We have sent a letter out to various industry members and public groups that we have worked with - law enforcement, principals, just a general contact list - advising them of all the forum dates. We also have press releases that went out and we have also made personal contact with various groups in each district as well as the elected representatives and senators.

MR. STEEN: How are those meetings conducted? What's the agenda?

MS. FOX: Generally, we open up with a 10 to 15 minute presentation that Mr. Garza or Mr. Yarbrough will do that just gives background on our mission, our goals, our programs, how many people we have, the type of measures the legislature looks at when they evaluate our performance. Then we open it up for input.

MR. STEEN: Are minutes taken or how do you keep a record of what was talked about?

MS. FOX: We don't record it. I take notes and from those notes I will reduce those down to the themes or general points that are made during that comment period. Sometimes they are very specific things that is something we can correct when we are right there at the district. It just might be a minor complaint or something of that nature. So, it kind of depends on what the issue is and how we handle it. Hopefully, we will develop through this

general themes that run through all eight regions that we go to that we can then focus on and try to give some attention to.

MR. STEEN: Thank you.

MS. MADDEN: Is it also on our website?

MS. FOX: Yes, ma'am, it is. It's on our website with the locations, dates and times.

One other thing I wanted to bring your attention to is at the same time we also are beginning some seller training seminars. One of the things that we did when we changed our seller training rules a couple of years ago is to try to upgrade the requirements of the trainers that are out there hired by the third party vendors. We have seven seminars throughout the state beginning in February and ending on March 7<sup>th</sup> directed towards those trainers. They talk some about the administrative requirements that they have. Part of the curriculum is addressed to training techniques and then we have some best practice kind of workshops set up in the afternoon. We are moving forward trying to enhance the seller training that we have out in the field.

MR. SHIVERS: Good. Greg?

MR. HAMILTON: Mr. Shivers, Commissioners, approximately two years ago, TABC procured a grant from the Texas Department of Transportation to look at the effectiveness of the seller/server training program. We put out a bid notice and the Survey of Organizational Excellence from the University of Texas won the contract as far as doing the survey on seeing what's the effectiveness of our seller/server training.

In this survey, one of the programs that we did was go out and do a sale to intoxication sting and we also did minor stings. We selected approximately 100 locations in three different areas - San Antonio, Houston and Dallas. We would send in agents that were pseudo drunks. They pretended to be drunk. These individuals were trained on how to act drunk. On some occasions, agents poured alcohol all over them. They went into off-premise locations and attempted to purchase alcoholic beverages. On some of the occasions, our agents told the clerk, "Boy, have I had too much to drink, but I need one more for the road." The percentages for the whole state, 248 out of 304 locations sold alcoholic beverages to our pseudo drunks that went in the locations. In the Dallas/Fort Worth area, we had a 98 percent sell rate and that's 99 out of 101 attempts. In Houston, we had 84.2 percent - 84 out of 102 locations. In San Antonio, we had 64.4 percent or 84 out of 101 locations.

At that particular time, we recognized we had a problem. I contacted my Fort Worth office and asked them to look into finding what they think is the most efficient and effective way in addressing these locations in selling alcoholic beverages to intoxicated people. One of the things they came back with is what we normally do - go inside an establishment and work undercover which is pretty time consuming, and if we were to run something like that in the Houston area, if we did find an individual that would sell to an intoxicated person and try to arrest them, we are locking down two or three agents at the jail for three or four hours. That was the best way that our agents from the Fort Worth area had presented to me to address this particular issue.

Here at headquarters, we knew we had to do something about this particular issue. One of the employees here at headquarters came up with the idea of us possibly getting someone intoxicated and sending them into an establishment and seeing if the individuals would sell alcoholic beverages to them. This idea was put out there, and we had a district office out of the Dallas area that went and talked with the prosecuting attorney. They talked with some legislators and several judges up in the Dallas area, and they were in support of us going out and trying to find out what the problem was.

We did this operation on December 20<sup>th</sup> in Commerce, Texas. We had an agent that volunteered to do this. We went to seven locations. Six of those locations sold, and our agent was, in fact, intoxicated. The reason that the seventh didn't sell, I believe, was because they were closed. We have the supervisors, Captain Mike Rogers and Lieutenant David Alexander, here. I know this is a controversial issue. They went out and spoke with a lot of the politicians there. They talked to the prosecutors, and they got support from these individuals. We have asked them to come forward today just in case you had any questions about any particulars. They are here to answer any of your questions on that particular sale to intox that we performed in Commerce, Texas.

MS. MADDEN: These two gentlemen are so professional. I know them personally and want to thank them for everything they are doing for the state. I sure appreciate it. I know you have been very successful in this endeavor. Let me just ask you, do you see any kind of liability connected with this particular operation? Could it come back to haunt us in any way?

MR. ROGERS: That would be a good question, Ms. Madden. I'm not sure if we would have a liability to a certain degree. I think we have done everything we could to try to look at every angle of the initiative at the time and try to make sure we didn't have any problems arise. Fortunately, the operation

went pretty well as far as I could see. We didn't have any problems.

MS. MADDEN: Since we obviously have a problem, do you think there would be any merit in stiffening the penalties for this kind of situation? When we go in and find out that they are selling to intoxicated people, maybe they are getting off too lightly. I don't know. I'm asking you all.

MR. HAMILTON: I'd like to say something about that. In some of the areas around the state, we have some county attorneys that have come out publicly and stated they will not prosecute sale to intox. I think it depends on what area you go to. As far as the penalty, I think the penalty that's in place is good enough. It just needs to be enforced.

MS. MADDEN: Is it a fine?

MR. HAMILTON: It's a class A misdemeanor.

MS. MADDEN: What does that mean?

MR. HAMILTON: Up to 4,000 dollars and up to one year in jail or both.

MS. MADDEN: That seems pretty stiff.

MR. HAMILTON: This is something that I think we haven't aggressively been trying to go in and do. We've been looking at the minors, specifically. I think this is a problem that we have. If we don't do this particular operation, I think we need to pay closer attention to sale to intox. As I said before in these commission meetings, there has been research that shows 50 percent of the individuals that have been arrested for DWI are coming from bars. I think that once we put these individuals on notice - just like when we started the minor sting operation, it was a 35 percent noncompliance rate. We are down to 20. We are trying to get it down lower. I think that once the public is aware that we are going to address this aggressively - not only TABC because we only have 225 agents - I think it's important that we solicit the help, which I see a lot of local law enforcement coming on board and taking this alcohol abuse very seriously. I think we are moving in the right direction. We have to come up with some means of addressing the issue. Other than this, there is no more efficient way of addressing this issue. They either sell to them or they don't. Otherwise, our agents go into establishments and sit there for an hour and a half or two hours. By our people going in there and sitting for an hour or two, I think that if we catch someone selling to an intoxicated individual that it will not be effective unless those individuals that sell are punished to the full extent of the law.

MR. SHIVERS: John, do you have anything?

MR. STEEN: What was the followup with these six establishments that sold?

MR. ROGERS: As of right now, it's pending...

MR. HAMILTON: The cases are going to come to headquarters and we are going to sit down and the executive team is going to review them. They did have conversation with the prosecuting attorney.

MR. ROGERS: Right. We went and visited with the county attorney in Hunt County and showed him a video of number seven on the list. We showed him what the outcome was. He would be willing to accept that for prosecution. The others, we did not feel that maybe there was enough there to show that the clerk had knowledge that the individual was intoxicated, so we did not feel it would be warranted to submit those to the county attorney. The administrative part will be forwarded up to Austin for Austin's consideration.

MR. SHIVERS: Why did you choose to intoxicate an agent rather than use agents acting as drunks? Why did you get an agent drunk rather than just using an actor?

MR. HAMILTON: We already did the actual sting with the agents pretending to be. This was decided here at headquarters that we would move forward with an intoxicated agent just in case we can bring charges. If you have a pseudo drunk - a person that's pretending to be intoxicated - there's no charges that you can bring against those individuals.

MR. STEEN: Do you know whether they were seller/server trained - the clerks that sold?

MR. ROGERS: I believe there were two out of the six. One of them was the permittee himself and one clerk was certified. The others were not.

MR. HAMILTON: It's funny that you asked that question. On this pseudo sting that we did earlier, there was pre-questions and post-questions. When we went and asked the post-questions after each incident, the majority of the people knew that the person acting intoxicated appeared to be intoxicated, but they still sold. Some of these people were seller/server trained. At the same time, they also knew that it was against the law to sell, but they still sold. These individuals are gaining knowledge in the seller/server training, but until we hold them accountable, I really don't believe that those individuals are going to take this seriously.

MR. SHIVERS: I understand you talked to county prosecutors and county judges and

members of the legislature about this, but I tell you I don't like the idea of having agents who are enforcing laws against sale to intoxicated people, sale to minors, trying to prevent this, getting drunk on the job, even if it's part of the job. I just think it's a terrible idea. I'm a little surprised we got any legislative support for this idea. I can imagine coming up before the legislature and they say, "You mean to tell me you took an agent on duty and you got him drunk and took him in to buy something?" I understand it's a serious problem, sale to intox, but there's got to be a better way to attack it than this. I don't know what it is, but I...

MR. HAMILTON: One of the things that I would like to say is that this is an issue I feel that TABC needs to address and address aggressively. However, we are going to have to go back in and look at our priorities because we can't be everything to everybody. There's a lot of different charges that TABC has to do. This right here, I think it truly saves lives once we start addressing these particular issues.

MR. SHIVERS: I don't doubt that at all. I question whether we have any manpower savings by doing this over putting somebody in an undercover capacity. If you've got an agent who's intoxicated, it's going to take one or two agents to watch that agent to make sure he doesn't hurt himself or herself. Whether they are tied up watching the intoxicated agent or whether they are tied up at the jail booking somebody, they are going to be tied up anyway.

MR. HAMILTON: Then you have to watch that individual when you take them home.

MR. SHIVERS: All night long.

MR. GARZA: One of the things that we did talk about, Mr. Chairman, with respect to the campaign, and you asked the question, Ms. Madden, in terms of the liability, due to the controversial nature of the whole campaign I think there's always the potential liability in terms of public opinion, the reaction to us using this as part of our enforcement arsenal. As Randy and I talked about earlier, this serves as a wake up call to the business people involved, to the people in the industry, to all of us here at the agency that there is an issue here in the State of Texas that we need to come up with some means of addressing it. This may not be perhaps the most appropriate or most palatable means of doing this, but I think it falls within the responsibility of our agency to come up with a way of taking this story out, whether we go to the public media with this, but we certainly need to come up with some means of letting folks in this state know this is an ongoing issue. Like we spent all that time and energy years back targeting minor stings, I think we need to make sure we shift similar emphasis to at least bringing the issue to

the forefront and letting people know that this may be a tool that we may use from time-to-time. I don't believe it's something we are going to say we are going to adopt and run with it starting tomorrow across the state, but certainly I think it bears noting that the results were such that we all have to be more cognizant and more aware of the fact that this is an issue that the agency and the industry needs to work hand in hand on to address.

MS. MADDEN: I agree. I know that you are aware of this, but in the *Dallas Morning News* we had a big article on the front page about alcohol-related fatalities. We always want to know in our hearts that we are doing all we can to address the issue. I understand the Chairman doesn't agree with this, but I do want to say whether you agree with it or you don't, I do appreciate your creative thinking in trying to address the problem.

MR. GARZA: I will tell you that both Captain Rogers and Lieutenant Alexander did a noteworthy job of making sure that everyone here at headquarters was apprised of what was going on. They were very deliberate in their steps. They contacted people and made sure that everybody was aware it was coming. We told people what we were going to do. We did it and in some cases now we need to come back out and say this is what we did and this is what we found.

MR. SHIVERS: I agree with you. It's a serious problem. We need to do something about it, but this isn't the thing to do. Of course, part of the problem in this is sometimes it's very hard to tell when someone is intoxicated if they are just walking up and making a retail purchase or even in a restaurant or a bar setting. Some people show intoxication easier than others and some mask it pretty well. The consumer has some responsibility in this, too. Until the penalties for drunk driving and public intoxication are increased, there's not much incentive for the consumer of a beverage to stay sober. For whatever that's worth...

MR. STEEN: Chief, this is an idea we came up with? It's not been tried anywhere else in the nation?

MR. HAMILTON: Yes, it has been tried. We found out later that this has been tried before. To what extent, I don't know. I spoke with my colleagues from Colorado, the director of the ABC there. They tried it. He said they went about it the wrong way. They sent in an agent and got him extremely inebriated and didn't have any agents in there with him. It was a PR nightmare. He said they are still feeling the pain right now and this was six or seven years ago.

MR. STEEN: This was Colorado?

MR. HAMILTON: Yes, sir.

MR. STEEN: How did you find out about it?

MR. HAMILTON: He serves on the National Liquor Law Enforcement Advisory Board with me and I was telling them about this particular initiative that we were looking at. I was trying to get a gauge on what the other states are doing as far as the sale to intox. This is a problem not unique to Texas. Now they are watching us to see what we do to address that issue.

Ms. Madden went to D.C. a couple of months ago and spoke with a representative from the National Highway Traffic Safety Association and several other organizations. I've been working with an organization called Pacific Institute Research and Evaluation. They do research on addressing different alcohol issues. We are in the process of trying to find funding so that they can come in and do some research. They are really interested in our happy hour rule, going in and enforcing the law as far as it applies to our promotional practices. We are negotiating right now with the Texas Department of Transportation which we are trying to receive roughly 40,000 dollars to put together a manual on how the process is going to be carried out. NHTSA wants Texas to come up with funding to show that we have a buy-in on addressing this particular issue. There's an organization called the National Institute....it's NIAAA. I don't know what all of that stands for, but they are willing to put in 150,000 dollars to actually go out and do the process here in Texas in two or three different locations. From there, if it proves to be successful, the National Highway Traffic Safety Association has agreed to put in five million dollars and take this program nationally as far as the effectiveness of addressing sale to intox. They are looking at addressing the promotional practices as opposed to actually waiting until someone gets intoxicated.

MR. SHIVERS: Anything else? John?

MR. STEEN: Chief, you mentioned at the beginning of your presentation about this study that was done on the effectiveness of seller/server training.

MR. HAMILTON: Yes, sir.

MR. STEEN: That was completed?

MR. HAMILTON: That was completed.

MR. STEEN: Have you reported that to us?



MR. HAMILTON: I believe Mr. Bailey may have given you copies. This was back in May of 2000. If not, I have copies in my office and I will get them as soon as the commission meeting is over.

MR. STEEN: I'd like to see that.

MR. HAMILTON: Okay.

MR. SHIVERS: Captain Rogers and Lieutenant Alexander, thank you very much. We appreciate your efforts.

Fiscal stewardship?

MS. HUDSON: This month, we looked at the key performance measures. We have 10 of them this year. Of those 10, we met seven of them. One of them on the average cost we were below the range and on two - percent of licensed establishments inspected annually and percent of compliance activities resulting in administrative or compliance actions - we exceeded the allowable range.

The other area that we looked at was the fleet. We have adopted a vehicle fleet plan that's in accordance with the guidelines of the Office of Vehicle Fleet Management. It's good to know that most of our fleet is less than six years old with no vehicles over 100,000 miles. This new fleet has decreased our maintenance cost and those have decreased about 40 percent.

The other area that we looked at is the technology refresh which was a new initiative this last year. We've been able to replace about 244 of our computers. Hopefully, we will get the next wave of those replaced next year starting in September.

MR. SHIVERS: Questions?

MR. MADDEN: No.

MR. SHIVERS: John?

MR. STEEN: No.

MR. SHIVERS: Thank you very much.

Mr. Bright?

MR. BRIGHT: Sir?

MR. SHIVERS: What does our employee manual say about agents who are arrested and

convicted for DWI?

MR. BRIGHT: Our employee manual says general things. I do not believe that it mentions DWI particularly.

MR. SHIVERS: What has been our practice?

MR. BRIGHT: Our practice has been we have terminated at least one enforcement division employee for being arrested for DWI. We have not terminated non-enforcement employees for DWI. All employees are under an obligation to report to us any interactions that they have with the criminal justice system. It is handled as a disciplinary investigation and matter under that general language about maintaining appropriate professional...

MR. SHIVERS: Our practice is to dismiss an agent who is arrested for DWI?

MR. BRIGHT: The one incident that's come up since I have been here, that's what we did. We fired a captain in Fort Worth.

MR. SHIVERS: Let's just be consistent in what we are doing about agents who are intoxicated. You are a lawyer. How would you like to be in court defending this?

MR. BRIGHT: I think there's a difference between driving while intoxicated and being intoxicated. I think there is a crime of public intoxication and we make a lot of arrests for public intoxication. A public intoxication arrest is supported by an officer's judgment on the scene, not only that the person was intoxicated but, strangely enough, the Penal Code says intoxicated to the point where they are a danger to themselves or others. That's a judgment call that our agents make every night they work. You are quite correct. It is a challenging and difficult issue.

MR. SHIVERS: I'm not going to pursue it any further. Thank you.

No one signed up for public comment. Motion to adjourn?

MS. MADDEN: So moved.

MR. STEEN: Second.

MR. SHIVERS: We are adjourned.

The meeting adjourned at 2:40 p.m.